

RESOLUTION NO. 12-31

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA APPROVING A RELOCATION AND RECONSTRUCTION AGREEMENT WITH CBS OUTDOOR, INC., A DELAWARE CORPORATION, A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF IN SUBSTANTIAL FORM AS EXHIBIT "1", AND FURTHER AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO THE AGREEMENT.

WHEREAS, the City and CBS Outdoor, Inc. have agreed to relocate and/or reconstruction billboard signs with static and digital (LED) billboard faces as allowed by the City's new regulations; and

WHEREAS, in furtherance of the public purpose of removing unsightly, deteriorating rooftop billboard signs and improving the aesthetics of the community together with gaining public service access for announcements on commercial billboards and pursuant to section 70.20, Florida Statutes, the City finds it in its best interest to enter into this relocation and reconstruction agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this resolution are hereby adopted and incorporated by reference as if fully set forth herein.

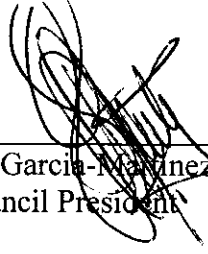
Section 2: The City Council of the Hialeah, Florida hereby approves a Relocation and Reconstruction Agreement with CBS Outdoor, Inc., a Delaware corporation, a copy of which is attached hereto and made a part hereof in substantial form

RESOLUTION NO. 12-31

Page 2

as Exhibit "1" and further authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into the Agreement.

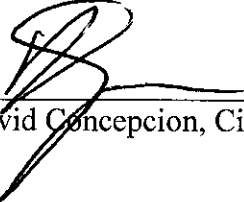
PASSED AND ADOPTED this 13th day of March, 2012.



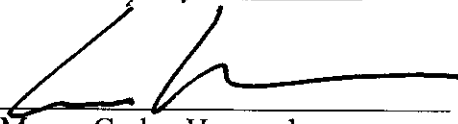
Isis Garcia-Martinez
Council President

Attest:

Approved on this 13 day of March, 2012.




David Concepcion, City Clerk



Mayor Carlos Hernandez

Approved as to form and legal sufficiency:



William M. Grodnick, City Attorney

RELOCATION AND RECONSTRUCTION AGREEMENT

THIS RELOCATION AND RECONSTRUCTION AGREEMENT (this "**Agreement**") is made and entered into as of this ____ day of ____, 2012 (the "**Effective Date**"), by and between the City of Hialeah, Florida, a municipal corporation organized and existing under the laws of the State of Florida (the "**City**"), and _____, ("**the Billboard Company**").

RECITALS:

WHEREAS, the City of Hialeah Code of Ordinances (the "**City Code**") Chapter 74, Entitled "Signs" (the "**Sign Code**"), regulates the use and operation of signs throughout City; and

WHEREAS, the Sign Code currently prohibits billboard signs in the City; and

WHEREAS, the Billboard Company currently owns and operates, with the appropriate Florida State Department of Transportation (FDOT) and City permits, numerous billboard signs throughout the City since before the enactment of the current Sign Code; and

WHEREAS, the Billboard Company is the owner of the legally existing, non-conforming billboards located within the jurisdiction of the City and more fully described in **Exhibit "A"** attached hereto (the "**Legal Nonconforming Billboards**"); and

WHEREAS, the City has determined that it is a good public purpose to reduce the number of billboard signs located within the interior of the City by relocating them along the Expressways and to provide for modern type billboard signs; and

WHEREAS, Florida Statutes Section 479.24 provides that just compensation shall be paid for the removal of any legal non-conforming billboard signs located along an interstate or a federal-aid primary highway system; and

WHEREAS, Florida Statutes Section 70.20 (2002), authorizes municipalities to enter into "relocation and reconstruction agreements" that allow governmental entities to undertake

public goals without the expenditure of public funds while allowing the continued maintenance of private investment and signage as a medium of commercial and non-commercial communication and authorizes such “relocation and reconstruction” of billboards by agreement, ordinance, or resolution; and

WHEREAS, the City and the Billboard Owner have agreed to relocate and/or reconstruct the billboard signs identified on Exhibit “B” (the “70.20 Billboards”) with static and digital (LED) billboard faces (the “Digital Billboard Face(s)”); and

WHEREAS, in furtherance of the described public purpose and pursuant to Florida Statutes Section 70.20 (2002) the City is amending its Sign Code to encourage the permanent removal of legal non-conforming billboard signs within the City and empower the City and the owners of such signs to enter into relocation and reconstruction agreements that result in a net reduction in the number of billboard signs within the City (the “Amended Sign Code”); and

WHEREAS, the City and the Billboard Owner desire to enter into this Agreement to provide the terms and conditions under which the Billboard Owner will be permitted to remove the Takedown Billboards and to construct the 70.20 Billboards; and

WHEREAS, the City finds that the provisions of this Agreement are in the public interest.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Billboard Owner agree to as follows:

1. **Incorporation of Recitals.** The above recitals are true and correct and are incorporated into and made part of this Agreement.

2. **Waiver of Just Compensation.** In consideration of the rights granted, the Billboard Owner hereby expressly waives any right to receive from the City just compensation for the removal of the billboard sign faces and supporting sign structures associated with the Takedown Billboards identified in Exhibit “B” whether such a claim for just compensation is predicated on Sections 70.001, 70.20(9), 479.15(2) or 479.24, Florida Statutes.

3. 70.20 Billboards / Voluntary Removal of Takedown Billboards.

3.1 The Billboard Owner shall remove the billboard signs described as takedown billboards in Exhibit "B" which consist of two roof-top billboards (collectively the "Takedown Billboards") in accordance with the provision of Section 3.2 hereof. Notwithstanding anything to the contrary, and in consideration for the Billboard Owner's removal of the Takedown Billboards, the Billboard Owner shall be permitted to relocate, reconstruct, and/or retrofit the takedown billboards or replacement billboards at three new locations (one new location and two existing locations) in accordance with the Replacement and Removal Schedule provided in Exhibit "B" hereto (the "70.20 Billboards").

3.2 Within fifteen (15) days after the Billboard Owner's receipt of all necessary final governmental approvals, authorizations and permits for the erection, installation and operation of a 70.20 Billboard, the Billboard Owner shall, at its sole cost and expense, permanently and voluntarily remove (if not already theretofore removed) the sign faces from the Takedown Billboards identified in the Replacement and Removal Schedule in Exhibit "B" hereto for the corresponding 70.20 Billboard.

3.3 In furtherance of the overall objectives of this Agreement and pursuant to Florida Statutes §70.20 and the Amended Sign Code and the objectives set forth in each of them, the City has agreed to permit the 70.20 Billboards at the Designated Locations identified in Exhibit "B." However in the future, in the event that the view of any 70.20 Billboard is substantially impaired from the roadway, highway or expressway from which it is intended to be viewed, the Billboard Owner is unable to install and/or operate a 70.20 Billboard at a Designated Location through no fault of the Billboard Owner, or the Billboard Owner is unable to enter into a lease agreement with the property owner on terms acceptable to the Property Owner in its sole and absolute discretion (the "Affected Billboard Face"), then the Billboard Owner shall have the right to relocate and reconstruct Affected Billboard Face to another location of similar value for outdoor advertising purposes within the City along an Expressway as identified in the Amended Sign Code (each an "Alternative Location"). If the Billboard Owner is unable to relocate and/or reconstruct the Affected Billboard Face to an Alternate Location as defined herein, then the Billboard Owner shall be permitted to transfer the Affected

Billboard Face to one of its existing locations within the City where it then owns a billboard sign as selected by the Billboard Owner (each an "Existing Location"). The City shall not impose, as a condition for its approval of a relocation and reconstruction under this paragraph, that: (a) the Billboard Owner make any payment to the City; (b) that the Billboard Owner take down any additional billboard sign faces or sign structures; (c) that the Billboard Owner reduce the size or height of the 70.20 Billboard(s) so relocated; or (d) that the Billboard Owner operate the 70.20 Billboard(s) so relocated in any manner that is materially inconsistent with the previous operation of the 70.20 Billboard(s) by the Billboard Owner, including, without limitation, requirements (i) that the Billboard Owner reduce the hours of operation of the 70.20 Billboard(s), (ii) that the Billboard Owner display advertising in increments that are greater than eight (8) seconds or increments permitted by FDOT regulations (whichever increment is greater); (iii) that the Billboard Owner limit the amount or frequency of commercial advertising displayed on the 70.20 Billboard(s); or (iv) except as required by Section 3.4 hereof, that the Billboard Owner display messages benefiting any entity or cause. If required, the City shall issue all necessary approvals and permits to the Billboard Owner to so relocate the Affected Billboard Face.

3.4 The City will have access to use the Digital Billboard Face(s) on the 70.20 Billboards through the State of Florida's Office of Emergency Management (the "OEM"), upon official activation of the OEM for certain limited emergency reasons such as hurricanes, amber alerts, and police of fire emergency situations. Such access shall be subject to the agreements the Billboard Owner has in place from time to time with either the FBI, State of Florida, and the OEM.

3.5 The Billboard Owner agrees not to permit advertising that promotes adult entertainment (i.e. containing or relating to nudity, sexual activity or pornography) uses on the 70.20 Billboards.

4. **Permit Amendment Fee.** Within thirty (30) days of the Effective Date of this Agreement, the Billboard Owner shall submit a complete permit application to the City for the 70.20 Billboards. The Billboard Owner shall pay the City a one-time permit amendment fee of Twenty Five Thousand Dollars (\$25,000.00) for each Digital Billboard Face (the "Permit

Amendment Fee”) within 15 days of the issuance of all necessary local and state governmental approvals for the Digital Billboard Face (any or all of which are fully refundable by the City to the Billboard Owner in the event the Digital Billboard Face(s) is/are not installed or erected).

5. **Neighborhood Enhancement Contribution:** In accordance with the provisions of the Amended Sign Code of 2012, the Billboard Owner shall pay the City a yearly fee of Fifteen Thousand and 00/100 Dollars (\$15,000.00) for each Digital Billboard Face located within the City for so long as said Digital Billboard Face remains erected, to be used for beautification. By mutual agreement of the parties hereto the Billboard Owner shall remit to the City (by no later than September 1, 2012) as refundable advance payment(s) (any or all of which are fully refundable by the City to the Billboard Owner in the event the Digital Billboard Face(s) is/are not erected or installed) for the first three (3) years the Neighborhood Enhancement Contribution for the 3 billboard signs identified on Exhibit B in the amount of \$135,000 (being \$15,000 per year x 3 years for 3 signs) ($\$15,000.00 \times 3 = \$45,000 \times 3 = \$135,000$.) The Neighborhood Enhancement Contribution shall be paid within 120 days of the issuance of all local, state and other permits and other entitlements required by law and necessary for the construction and operation of the Digital Faces. It is understood and agreed that both the Permit Amendment Fee and the Neighborhood Enhancement Contribution are being paid and will be used to mitigate any impact to the City and its residents from the rights granted hereunder and actions taken pursuant thereto.

6. **Billboard Owner and Landowner Consent.** The construction of a 70.20 Billboard, or the relocation and reconstruction of an Affected Billboard Face to an Alternative Location or Existing Location as the case may be, shall require the consent of the Billboard Owner and the owner of the real property where it will be located. The Billboard Owner shall bear the sole risk of finding, securing and maintaining the sites for the erection of a 70.20 Billboard, or the relocation and reconstruction of an Affected Billboard Face.

7. **Indemnity and Hold Harmless.** This Agreement contemplates the removal of existing billboard signs in exchange for the Billboard Owner’s right to erect, install, operate, and maintain 70.20 Billboards in accordance with the terms and conditions set forth in this Agreement. It is recognized that the Billboard Owner may have lease agreements with property

owners (the "Property Owners") relating to such existing signs that the Billboard Owner is voluntarily obligating itself to remove under the terms of this Agreement. Consequently, the Billboard Owner agrees to indemnify the City from any lawsuit, and shall defend with counsel designated by the Billboard Owner and reasonably acceptable to the City, and hold the City harmless against any claim asserted by an affected Property Owner arising from the removal of the Takedown Billboards identified in Exhibit "B" hereto that are removed after the date of this Agreement. In the event of litigation or an administrative proceeding concerning the validity or enforceability of the Relocation and Reconstruction Agreement or the enabling City Ordinance, the City shall be entitled to bring in the Billboard Owner as a party defendant in such a proceeding to defend or otherwise uphold the terms and conditions of this Relocation and Reconstruction Agreement.

8. **Assignments Binding Nature.** This Agreement will be binding upon and will inure to the benefit of and be enforceable by, the parties and their respective legal representatives, successors, or permitted assigns. The Billboard Owner agrees not to assign, transfer or convey (collectively "assignment") any ownership in a 70.20 Billboard unless the assignee shall execute an agreement to be bound by the terms and conditions of this Agreement.

9. **Governing Law/Jurisdiction/Venue.** This Agreement shall be construed and controlled by the laws of the State of Florida, and the parties further consent to jurisdiction, if available, and venue in the federal district courts sitting in Miami-Dade County, Florida. If, and only if, the federal district court lacks jurisdiction, the parties consent to jurisdiction and venue in the state circuit court in Miami-Dade County, Florida. The Billboard Owner waives all defenses of lack of personal jurisdiction and *forum non conveniens*. Process may be served on either party in the manner authorized by applicable law or court rule.

10. **Future Billboard Regulations.** a.) The Billboard Owner agrees to comply with and be bound by all federal, State of Florida, and City sign regulations regarding Billboard Signs but the City shall pay just compensation if it takes any action to partially or fully diminish the Billboard Owner's rights to maintain and operate the 70.20 Billboards obtained under the terms of this Agreement. b.) The following condition imposed by the Amended Sign Code shall be waived regarding the Digital Faces constructed pursuant to the terms hereof.

The City acknowledges and agrees that the billboards listed on Exhibit "A" are legally nonconforming billboards under the City Code (the "Legal Nonconforming Billboards"). No further consideration for the waivers set forth in Section 2 above and the fees payable by Billboard Owner except as provided in Sections 4 and 5 above. Billboard Owner is exempt for a period of ten (10) years from full execution hereof from payments otherwise payable to the City pursuant to Section 74-58 of the City Code entitled "Biennial Recertification of Legal Nonconforming Billboards", as amended from time to time, with respect to the three (3) billboards listed on Exhibit B and any and all future new billboards which may come to exist by reason of replacement, retrofitting, relocation or addition owned and/or operated by Billboard Owner in the City.

11. Authority; Rights; Severability. The parties agree and acknowledge:

11.1 This Agreement was negotiated and entered into by the City pursuant to the authority conferred upon it by law including Section 70.20, Fla. Stat. (2002), which provides in part that:

"municipalities. . . are specifically empowered to enter into relocation and reconstruction agreements on whatever terms are agreeable to the sign owner and the municipality . . . involved and to provide for relocation and reconstruction of signs by agreement, ordinance, or resolution."

Fla. Stat. § 70.20(1);

11.2 That the rights conferred upon the Billboard Owner under this Agreement are vested as of the Effective Date, and as such, any future sign regulation that may otherwise alter the terms of this Agreement, or diminish the Billboard Owner's rights with respect to maintaining and operating its 70.20 Billboards, shall respect and preserve such vested rights;

11.3 That, if any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, then said provision shall be severed, and the remaining provisions shall remain in full force and effect. Notwithstanding any provision declared illegal, invalid, or unenforceable, this Agreement has valid purposes, which include

inter alia facilitating the net reduction of billboard signs in the City in order to preserve and improve urban aesthetics and traffic safety while also properly balancing private property and commercial speech rights;

11.4 That nothing in this Agreement shall be read to impermissibly interfere with the lawful exercise of the City's police powers to protect the public from serious threats to health or safety; and

11.5 That this paragraph shall apply to all portions of this Agreement; and to the extent any language in this Agreement is deemed inconsistent or contrary to this paragraph, the language contained in this paragraph shall control.

12. **Modification.** This Agreement may only be modified or amended by the express, written consent of the parties to this Agreement, executed with the same formalities that this Agreement was executed. The Agreement shall remain unmodified and in full force and effect, and the parties hereby ratify their respective obligations hereunder.

13. **Entire Agreement.** The Agreement, and all Exhibits attached hereto, shall constitute the entire agreement among the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications.

14. **Representations and Warranties.** The Billboard Owner hereby represents and warrants that it: (a) is a corporation in good standing under the laws of the State of Delaware; (b) is duly authorized to transact businesses in the State of Florida; and (c) has taken all corporate actions necessary to authorize execution and performance of this Agreement. The City hereby represents and warrants that: (a) it is empowered to enter into this Agreement; and (b) this Agreement has been duly authorized by the Council of the City of Hialeah pursuant to the procedural requirements of Florida law.

15. **Agreement Running with the Billboard Owner.** This Agreement shall run with the Billboard Owners and the locations permitted hereunder, and shall be binding upon the parties hereto, their successors and assigns.

16. **Miscellaneous Provisions.**

- 16.1 Notices. All notices or other written communications required, contemplated or permitted under this agreement shall be in writing and shall be hand delivered, telecommunicated or mailed by registered or certified mail, return receipt requested, to the following address:

City of Hialeah:

City of Hialeah Attorney's Office
501 Palm Avenue
Hialeah, FL 33010

Billboard Owner:

CBS Outdoor, Inc.
Attn: General Counsel
405 Lexington Avenue
New York, NY 10174

With a copy to:

CBS Outdoor Inc.
Attn: Lease Manager
2640 N.W. 17th Lane
Pompano Beach, FL 33064

- 16.2 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which constitute the same Agreement.
- 16.3 The headings contained herein are for the convenience of reference only and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.
- 16.4 The effective date of this Agreement shall be as of the date it has been executed by both parties hereto.
- 16.5 The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and, accordingly, no Court or Administrative Hearing Officer construing this Agreement shall construe it more strictly against

one party than the other and every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning.

- 16.6 This Agreement shall be recorded in the Public Records of Miami-Dade County, Florida.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the effective date shown above.

CITY OF HIALEAH

BILLBOARD OWNER

By: _____
City Mayor

By: _____
Title: _____

Dated: _____, 2012

Dated: _____, 2012

Attest:

City Clerk

Attest:

Corporate Secretary

Dated: _____, 2012

APPROVED AS TO FORM AND
CORRECTNESS:

City Attorney